

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 38001 through I MC 38058; I MC 38061 through I MC 38069.

Appeal dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

APPEARANCES: Russell L. Osborn, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of March 2, 1981, the Idaho State Office, Bureau of Land Management (BLM), declared unpatented mining claims I MC 38001 through I MC 38058 and I MC 38061 through I MC 38069 abandoned and void because no proof of labor or notice of intention to hold the claims had been received in 1980 as required by 43 CFR 3833.2. ^{1/} This regulation is based upon section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), which provides that the owner of unpatented mining claims located prior to October 21, 1976, shall file with the proper office of BLM within the 3-year period following October 21, 1976, and prior to

^{1/} In William E. Bowman, 56 IBLA 312 (1981), we considered the timely filed appeals of the owners of mining claims I MC 38061 through I MC 38064 and affirmed the BLM decision as to those claims.

December 31 of each year thereafter a copy of the evidence of assessment work or a notice of intention to hold the claims as recorded in the office where the notice of location is recorded. Section 314(c) provides that failure to file the instruments required by sections 314(a) and (b) within the times prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. The BLM decision also set forth the procedures to be followed in filing an appeal therefrom, including the mandatory requirement that a notice of appeal must be filed within 30 days after receipt of the decision.

As no notice of appeal from the decision of March 2, 1981, was filed with BLM within 30 days after service of the decision on the parties, BLM closed the cases involving these mining claims.

On December 16, 1981, Russell L. Osborn, agent for Russco Silver, Inc., filed a notice of appeal from the March 2, 1981, decision. His statement of reasons, transmitted January 15, 1982, and received by this Board January 19, 1982, states only that the owners of the claims were not notified by BLM of the requirement to file evidence of the assessment work performed on the claims in the proper BLM office each year.

The regulations require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. 43 CFR 4.411(a). This Board has held that the timely filing of a notice of appeal is required to establish the jurisdiction of the Board to review the decision below and that failure to file the appeal within the time allowed mandates dismissal of the appeal. Nequoia Association, 60 IBLA 386 (1981); Ilean Landis, 49 IBLA 59 (1980); see Browder v. Director, Ill. Dept. of Corrections, 434 U.S. 257, 264 (1978); Pressentin v. Seaton, 284 F.2d 195, 199 (D.C. Cir. 1960).

As no notice of appeal from the March 2, 1981, decision was filed with BLM within the 30-day period for appeal of that decision, the BLM decision became final, the mining claims are considered abandoned and void, and this proceeding must be dismissed.

Nevertheless, we wish to respond briefly to Osborn's complaint.

We may concede the accuracy of appellant's statement that BLM failed to advise them that failure to file annual proof of assessment work would give rise to the conclusive presumption of abandonment. But he may take no comfort in that concession, since the public is deemed to know the content of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). BLM has acted properly, pursuant to the statutory and regulatory duties placed upon it, in declaring the subject mining claims abandoned and void. The law contains no provision allowing the Department of the Interior to waive compliance with the laws of recordation or to accept late filings or to reinstate unpatented mining claims. West Fork Mining Co., 60 IBLA 370 (1981); Lyman Mining Co., 54 IBLA 165 (1981).

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

